

No 14/13/87-6Lab/707 —In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s M.D. Confed, Chandigarh versus Raj Kumar Ref. No. 246 of 1988.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No 246 of 1988

between

RAJ KUMAR, S/O SHRI ASHA RAM, VILLAGE ARYA NAGAR (KURDI), TEHSIL AND DISTT. HISSAR

and

THE MANAGEMENT OF (1) MANAGING DIRECTOR, CONFED, SECTOR-22-B, CHANDIGARH. (2) CONFED OFFICE NEAR SHAMA RESTAURENT, GURGAON

Present :

Shri S. K. Goswami, for the workman.

Shri S. K. Yadav, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—vide Haryana Govt. Labour Deptt. endst No. 24629—35, dated 24th June, 1987 :—

"Whether the termination/retranchment of services of Shri Raj Kumar is legal and just? If not, to what relief is he entitled?"

2. The facts given in the claim statement are that the applicant was appointed as Driver by the respondent-management on 15th October, 1981 and his services were terminated on 18th October, 1986 and his record throughout was clean and he had never been charge-sheeted and was a regular workman and he had worked for a period beyond 240 days. It was pleaded that compliance of Section 25 F of the Act had not been made, nor any notice in lieu of pay or compensation was paid and his termination was illegal. It was pleaded that petitioner was drawing Rs. 1170/- p.m. at the time of his termination.

3. Upon notice, respondent-management appeared and filed their written statement and took up the plea that the respondent was not an "industry" and termination order had been passed on the expiry of the term. It was pleaded that the work and conduct of the petitioner remained unsatisfactory and several complaints had been received against him regarding rash driving and mis-behaviour and his confidential report was not good. It was also pleaded that petitioner had not completed a period of 240 days.

4. In the replication, the contents of the written statement were controverted while those of the claim statement were reiterated.

5. On the pleadings of the parties, following issues were framed on 24th November, 1987:—

- (1) Whether termination/retranchment of services of Shri Raj Kumar is legal and just? If not, to what relief is he entitled?
- (2) Whether respondent does not come within definition of industry as defined in the I.D. Act? If so, its effect?
- (3) Whether the written statement is not verified and signed by the competent person.

S-A. I have heard the authorised representatives of the parties. My findings on the issues framed are as under :—

Issues No. 2 and 3 :

6. Both these issues were not pressed before me, therefore, no finding is called for.

Issue No 1

7. The Management has examined Ram Dhan Mehra, MW1, who deposed that the petitioner was appointed as Driver for 89 days on 16th October, 1989,—vide appointment letter Ex. M1 and he was given fresh appointment for 89 days up to 1984. It was stated that he was appointed on *ad hoc* basis and worked continuously as such up to 18th October, 1986. He proved letter of appointment Ex. M2. He stated that employment of the petitioner was not continuous and there was break in between, which could be for one day, 5 days or may be a month. He proved applications Ex. M4 to Ex. M6. He further deposed that petitioner could not be appointed after 18th October, 1986 as they did not receive any sanction from the head office for his further appointment.

8. On the other hand, petitioner has stepped into the witness box as WW1. He stated that he was appointed as Driver with the Confed on 17th October, 1981 and at no time any warning or chargesheet was issued, nor any accident took place during the period of his employment, nor he was challaned for rash driving. He stated that the management did not give any notice or pay in lieu thereof or retrenchment compensation was paid and they had instead recruited other driver after termination of his service and he was without a job and he could not get any job as he had become aged. He stated that he was ready to join the management if he was reinstated with full back wages.

9. It was argued on behalf of the management that the petitioner did not complete a period of 240 days in any of the year and he had not worked continuously and there were breaks in between and the post of the driver had been abolished and as the department had failed to get any sanction, therefore, services of the petitioner were terminated and they were not required to pay any retrenchment compensation as the petitioner's case did not fall within the scope of Section 25F of the I.D. Act, 1947.

10. On the other hand, it was argued on behalf of the workman that the petitioner had joined the service in October, 1981 and his services were terminated in October, 1986 and he had worked without any break, even if, break of one or two days was given, it was liable to be ignored and appointment for 89 days is an unfair labour practice and the management did not want that the workman should put in continuous service with the management. It was argued that though a plea had been taken in the written statement that the work and conduct of the workman was unsatisfactory, but no such record was produced, nor MW1 had stated a word in this regard in his examination in chief. It was argued that the entire record was with the management and it was for them to prove the break, if any, in the service of the petitioner. It was contended that the management was also to prove that the post of the driver had been abolished. It was added that the sanction in this case was deliberately withheld, so that management could employ a person of their choice.

11. Time and again, it has been held by the Hon'ble High Court that giving one day break and thereafter reappointing the workman is an unfair labour practice. No record whatsoever has been placed on the file to show that the work of the workman was unsatisfactory or that they had not kept any driver or that post of the driver had been abolished.

12. If services of the petitioner had been terminated on account of punitive ground, then an enquiry should have been ordered, but no steps were taken. The petitioner had worked for about five years with notional gaps or breaks, which are liable to be ignored. It is, therefore, held that the petitioner had completed 240 days and since compliance of Section 25F of the I.D. Act had not been made, therefore, his termination is illegal. It is thus held that the petitioner is entitled to be reinstated with continuity of service and full back wages. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

The 2nd September, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1288, dated the 30th August, 1994.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.